

REMARKS

Claims 38-64 are pending in the application. Applicants have carefully reviewed the arguments presented in the Office action and respectfully request reconsideration of the claims in view of amendments to the claims and the remarks presented below.

Objections

The Examiner has objected to claim 51 because the claim should end with a period. Applicant has amended the claim to correct this informality.

Rejections under 35 U.S.C. § 103

Claims 38-43, 45-55 and 61-63 have been rejected by the examiner under 35 U.S.C. § 103(a) as being unpatentable over Wardle (U.S. Patent No. 6,432,039) in view of Johnson (U.S. Patent No. 3,855,715). The Examiner states that: "Wardle ('039) teaches a cardiac harness (10) configured to fit about a patient's heart and a method of making a cardiac harness, comprising: (claims 38 and 47) a plurality of individual modules (Figure 1 (12 and 24)) assembled together to form the harness (10) including a coupling (16) having a first member (Figure 1, slit 14 on the left module) for selectively engaging a second member (Figure 1, slit 14 on the right module); (claims 39 and 49) wherein one of the modules (24) is more compliant than another of the modules (12) (column 4, lines 66-67); (claim 40) wherein at least two adjacent modules (12) are selectively releasable from another; (claim 41) wherein at least two adjacent modules (12 and 24) are connected to each other; (claim 43) wherein at least one pair of adjacent modules (12 and 24) are permanently affixed to one another; (claims 42, 45, 46, 50, 51 61 and 62) wherein the modules are configured for minimally invasive delivery; wherein the modules are configured for in vivo or ex vivo assembly (Examiner asserts, that the phrase "configured for" states that the device is capable for minimally invasive delivery, or in vivo assembly, thus does not provide any structural limitations of said device). Also, Wardle ('039) teaches both a lace (18) coupling of modules and a VELCRO hook and

loop coupling of modules (column 4, lines 16-36)." The Examiner further states: "It would have been obvious to one of ordinary skill in the art at the time of the invention to use the zip coupling having the coupling member for engaging zipper teeth of Johnson ('715) with the device of Wardle ('039) to provide quick coupling of adjacent modules, as taught by Johnson ('715)."

Applicant has amended independent claims 38 and 47 and 52. Applicant respectfully requests that Examiner reconsider these claims, and all claims dependent thereon, as patentably distinguishable over Wardle ('039) in view of Johnson ('715).

Applicant has amended claim 38 to recite "[A] cardiac harness configured to fit about a patient's heart, comprising: a plurality of individual detached modules assembled together to form the harness by zip couplings having a first member for selectively engaging a second member." In Wardle ('039), the containment structure (12) is not made of individual detached modules, but instead is a single structure of unitary construction with a slit (14). Even if Examiner were to interpret, in Wardle ('039), the portions of the containment structure (12) to either side of the slit (14) as "right module and left module," Examiner should observe that these "modules" are not detached but rather connected to each other at all times at the bottom of the containment structure (12). Furthermore, the recoil balloons (24) are not assembled together to each other or to the containment structure (12) by zip couplings nor "a lace (18) coupling of modules and a VELCRO hook and loop coupling." Applicant respectfully submits that 38 is now clearly patentably distinguishable over Wardle ('039) in view of Johnson ('715). It is respectfully requested that claim 38 and the pending claims dependent thereon be allowed at the earliest convenience.

Claim 47 has been amended to recite: " A cardiac harness configured to fit about a patient's heart, comprising: a first module which extends along a first portion of a circumference of the harness; and a second module which extends along a second portion of the circumference of the harness; wherein the first and second modules are completely

detached from one another until connected together by a zip coupling having a first member for selectively engaging a second member."

In Wardle ('039), the containment structure (12) does not have first and second modules that are completely detached from one another until connected by a zip coupling. The containment structure (12) is a single module of unitary construction with one or more slits (14) partially interrupting the surface. The walls of the containment structure (12) on either side of the slit (14) are already connected to each other at the bottom of the containment structure (12). Because the containment structure (12) is a single module of unitary construction connected at the bottom, the various surfaces of it are not "completely detached from one another." Applicant respectfully submits that claim 47 is now clearly patentably distinguishable over Wardle ('039) in view of Johnson ('715). It is respectfully requested that claim 47 and the pending claims dependent thereon be allowed at the earliest convenience.

Examiner has not stated a reason for rejection of claim 52 in the present office action. However, a similar rejection in co-pending 10/754,264 would leave Applicant to infer that the reason for rejection of claim 52 is for the same reasons as for rejection of claims 38 and 47 as stated supra.

Therefore, claim 52 has been amended to recite: "A method of making a cardiac harness, comprising: providing a plurality of detached modules; and connecting the detached modules to one another to form the harness by use of a zip coupling having a first member engage a second member."

Wardle ('039) does not disclose detached modules connected by use of a zip coupling. Because the containment structure (12) is a single unitary construction, the various surfaces of it are not "detached." In Wardle ('039), the lace (18) only determines the spacing of the slits (14). In Wardle ('039), the portions of the containment structure (12) are partially interrupted by the slits (14), but are always attached to each other at the bottom. Therefore, even if these portions are considered "left and right modules" as

stated by Examiner, these are not detached modules. Applicant respectfully submits that claim 52 is now clearly patentably distinguishable over Wardle ('039) in view of Johnson ('715). It is respectfully requested that claim 52 and the pending claims dependent thereon be allowed at the earliest convenience.

Rejections under obviousness-type double patenting:

Claims 38-55 and 61-63 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-9, 11-14, 16-18, 20 and 21 of U.S. Patent Nos. 6,723,041 B2 in view of Johnson ('715). A terminal disclaimer is being filed concurrently herewith under 37 C.F.R. § 1.3121(c). Accordingly, the double patenting rejection is obviated.

Examiner states that claims 38, 40-42, 44-48, 50-64 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 38,42, 44-60 and 62-64 of co-pending application 10/754,264. Applicant agrees to file a terminal disclaimer under 37 C.F.R. § 1.3121(c) should the conflicting claims in fact be patented. Accordingly, the provisional double patenting rejection is obviated.

Information Disclosure Statements

Applicants gratefully acknowledge that the Examiner has reviewed the prior-filed Information Disclosure Statement dated August 16, 2004. However, it appears that the Examiner may have inadvertently failed to initial some of the prior art listed and submitted. Specifically, on page 5 of 12, the Examiner's initials do not appear on some of the foreign patent documents. Also on page 11 of 12, the Examiner's initials do not appear on the non-patent literature documents. It is respectfully requested that the Examiner consider the prior art and initial the original Information Disclosure Statements in the next Office communication.

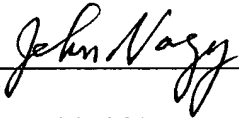
Conclusion

Claim 44 has been rewritten in independent form to include all of the limitations of the base and the intervening claims and is now in condition for allowance.

It is respectfully requested that the pending claims be allowed at the earliest convenience. The undersigned can be reached at (310) 824-5555 to facilitate prosecution of the application.

Respectfully submitted,

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